

AGREEMENT FOR ENGINEERING SERVICES
(LOCAL VERSION – COST PLUS FEE)

JOB NO. _____
FEDERAL AID PROJECT ("FAP") NO. _____

PREAMBLE

THIS AGREEMENT, entered into this ____ day of _____, _____, by and between the **CITY OF JONESBORO, AR** ("Owner"), and **W. WILLIAM GRAHAM JR., INC.** ("Consultant"), a corporation existing under the laws of the State of ARKANSAS, with principal offices at **100 N Rodney Parham Rd (ste 2B), Little Rock, AR.**

WITNESSETH:

WHEREAS, the Owner is planning to construct **IMPROVEMENTS TO THE CITY OF JONESBORO INDUSTRIAL LEAD RAIL SPUR from COMMERCE RD RAIL GRADE CROSSING to NESTLE RD RAIL GRADE CROSSING**; and,

WHEREAS, the Owner's forces are fully employed on other urgent work that prevents their early assignment to the aforementioned work; and,

WHEREAS, the Consultant's staff is adequate and well qualified, and it has been determined that its current workload will permit completion of the project on schedule.

NOW THEREFORE, it is considered to be in the best public interest for the Owner to obtain the assistance of the Consultant's organization in connection with engineering services. In consideration of the faithful performance of each party of the mutual covenants and agreements set forth hereinafter, it is mutually agreed as follows:

1. PRELIMINARY MATTERS

- 1.1. "Consultant's Representative" shall be **ROBERT B. GRAHAM**, until written notice is provided to the Owner designating a new representative.
- 1.2. "Contract Ceiling Price." The Contract Ceiling Price for this Agreement is **\$255,000.00**. The Contract Ceiling Price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement. In no event, unless modified in writing, shall total payments by the Owner under this Agreement exceed the Contract Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost, exceeding the Contract Ceiling Price.
- 1.3. "Contract Price" is aggregate amount of allowable costs and fees to be paid by the Owner under this Agreement.
- 1.4. "Default" means the failure of the Consultant to perform any of the provisions of this Agreement. *Default includes, but is not limited to, failure to complete phases of the work according to schedule or failure to make progress in the work so as to endanger timely performance of this Agreement, failure to pay subcontractors in a timely manner, failure*

to comply with federal and state laws, and failure to comply with certifications made in or pursuant to this Agreement.

- 1.5. "Department" or "AHTD" means the Arkansas State Highway and Transportation Department.
- 1.6. "DOT" means the United States Department of Transportation.
- 1.7. "FAR" means the Federal Acquisition Regulations, codified in 48 C.F.R.
- 1.8. "Fee" whether fixed or otherwise is a dollar amount that includes the Consultant's profit on the job.
- 1.9. "FHWA" means the Federal Highway Administration.
- 1.10. "Indirect Cost Rate." The Indirect Cost Rate is defined in the provisions of 48 C.F.R. Part 31, and is also subject to any limitations contained herein. The Indirect Cost Rate for the Consultant under this Agreement shall be **123.0** percent. If applicable, the Indirect Cost Rate for each subcontractor shall be listed in Appendix B.
- 1.11. "Title I Services" are those services provided by the Consultant before the award of the contract for the construction of the Project, consisting primarily of engineering services for the planning or design of the Project.
- 1.12. "Title I Services Ceiling Price." The Title I Services Ceiling Price for this Agreement is **\$ 155,000.00**. The Title I Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title I Services. In no event, unless modified in writing, shall total payments by the Owner related to Title I Services exceed the Title I Services Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title I Services exceeding the Title I Services Ceiling Price.
- 1.13. "Title II Multiplier" (if applicable) is the mark-up by which the fee and indirect costs associated with Title II services are calculated. The Title II Multiplier, which accounts for the fee and indirect costs, is multiplied by the salary rate, as shown on the Schedule of Salary Ranges, of the particular individual(s) performing the Title II services. The Title II Multiplier for the term of this Agreement is **2.20**.
- 1.14. "Title II Services" are those services provided by the Consultant after the award of the contract for the construction of the Project, consisting primarily of engineering services during the construction of the Project.
- 1.15. "Title II Services Ceiling Price". The Title II Services Ceiling Price for this Agreement is **\$ 100,000.00**. The Title II Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title II Services. In no event, unless modified in writing, shall total payments by the Owner related to Title II Services exceed the Title II Services Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title II Services exceeding the Title II Services Ceiling Price.

2. TYPE OF AGREEMENT

- 2.1. This Agreement is a cost-plus-fixed-fee contract. The Consultant is being hired to perform professional engineering services in connection with the Project as set forth herein. In consideration for Title I services performed, the Owner will reimburse the Consultant for allowable direct and indirect costs, as defined herein, and pay the Consultant a fixed fee. If Title II services are to be performed, the Owner will reimburse the Consultant for allowable direct costs and also pay the Consultant an amount determined by multiplying the salary rate of the individual(s) performing the Title II services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier.
- 2.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay the Consultant. Therefore, notwithstanding any provision of this Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of 48 C.F.R. Part 31, and the Consultant shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any information provided in determining the Indirect Cost Rates.

3. COSTS, FEES, AND PAYMENT

3.1. *Allowable costs.*

3.1.1. Allowable costs are subject to the limitations, regulations, and cost principles and procedures in 48 C.F.R. Part 31, which are expressly incorporated into this Agreement by reference. For the purpose of reimbursing allowable costs (except as provided in subparagraph 2 below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term *costs* includes only—

3.1.1.1. Those recorded costs that, at the time of the request for reimbursement, the Consultant has paid by cash, check, or other form of actual payment for items or services purchased directly for the Agreement;

3.1.1.2. When the Consultant is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

- Materials issued from the Consultant's inventory and placed in the production process for use in its performance under this Agreement;
- Direct labor;
- Direct travel;
- Other direct in-house costs; and
- Properly allocable and allowable indirect costs, as shown in the records maintained by the Consultant for purposes of obtaining reimbursement under government contracts; and
- The amount of progress payments that have been paid to the Consultant's subcontractors under similar cost standards.

3.1.2. Consultant's contributions to any pension or other post-retirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more

often may be included in indirect costs for payment purposes; *provided*, that the Consultant pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Consultant actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Consultant actually makes the payment.

3.1.3. Notwithstanding the audit and adjustment of invoices or vouchers, allowable indirect costs under this Agreement shall be obtained by applying Indirect Cost Rates established in accordance with Subsection 3.3 below.

3.1.4. Any statements in specifications or other documents incorporated in this Agreement by reference designating performance of services or furnishing of materials at the Consultant's expense or at no cost to the Owner shall be disregarded for purposes of cost-reimbursement.

3.2. *Salaries.* The following schedule covers the classification of personnel and the salary ranges for all personnel anticipated to be assigned to this project by the Consultant:

3.2.1.1. SCHEDULE OF SALARY RANGES

| | |
|---|--------------|
| PRINCIPAL ENGINEER/PROJECT MANAGER | 61.02 |
| DESIGN ENGINEER | 61.26 |

3.2.1.2. The Owner shall reimburse the Consultant for overtime costs only when the overtime has been authorized in writing by the Owner. When authorized, overtime shall be reimbursed at the rate of time and one-half for all nonexempt employees. Notwithstanding this provision, the Consultant must comply with all federal and state wage and hour laws and regulations, regardless whether the overtime is considered reimbursable under this Agreement.

3.3. *Indirect Cost Rates.*

3.3.1. Allowable indirect costs incurred by the Consultant shall also be reimbursed by the Owner at the Indirect Cost Rate. The Indirect Cost Rate of the Consultant for this Agreement shall be the rate as set forth in subsection 1.10. If applicable, the Indirect Cost Rate for subcontractors shall be determined in the same manner and subject to the same limitations as the Consultant, and shall be listed for each subcontractor identified in Appendix B. The Indirect Cost Rate, or any adjustment thereto, shall not change any monetary ceiling, contract obligation, or specific cost allowance, or disallowance provided for in this Agreement except as provided for in sections 3.3.4. and 3.3.5. The Indirect Cost Rate must reflect the allowable indirect costs pursuant to 48 C.F.R. Part 31 ("FAR").

3.3.2. In establishing the Indirect Cost Rate or proposing any adjustment thereto, the Consultant shall, upon request, submit to the Owner, FHWA, or their representatives an audited indirect cost rate and supporting cost data in accordance with the requirements set forth in the current *Arkansas Highway & Transportation Department Indirect Cost Rate Audit Requirements*.

3.3.3. During the term of this Agreement, if an audit of a subsequent accounting period of the Consultant demonstrates that the Consultant has incurred allowable indirect costs at a different rate than the Indirect Cost Rate, the Indirect Cost Rate shall be adjusted. Any adjustment is subject to the audit and documentation requirements

of the FAR and the current *Arkansas Highway & Transportation Department Indirect Cost Rate Audit Requirements*. Except in the case of a provisional Indirect Cost Rate, as provided in the following subparagraphs, or the disallowance of cost following a subsequent audit, any adjustment to the Indirect Cost Rate shall be effective only prospectively from the date that the adjustment is accepted.

- 3.3.4. In order to expedite some projects, when an audited indirect cost rate has not yet been submitted and approved, the Owner may extend a temporary waiver and accept a provisional indirect cost rate. This provisional rate must be reviewed by, and receive a positive recommendation from the Arkansas Highway and Transportation Department's Chief Auditor. The provisional cost proposal must be accompanied by written assurance from an independent CPA that he/she has been engaged to audit the costs in accordance with the above requirements. The anticipated audit must be based on costs incurred in the most recently completed fiscal year for which the cost data is available, with the audit scheduled to begin within a reasonable time frame. If the date of the initial cost proposal is within the last quarter of the current fiscal year, the audit may be delayed until the current fiscal year is closed and the final cost data is available. The written assurance from the CPA that he or she has been engaged to perform the audit at an appropriate time is still required.
- 3.3.5. Once an audited indirect cost rate is approved, the ceiling prices provided for in the initial agreement using the provisional indirect cost rate will be adjusted with a supplemental agreement to implement the resulting increase or decrease from revising the indirect cost rate, and all amounts paid the consultant prior to receipt and acceptance of an audited indirect cost rate will be retroactively adjusted for changes in the indirect cost rate. However, no changes in hours, fixed fees, or other costs will be allowed as a result of applying the audited indirect cost rate.
- 3.4. *Fees.* The justification for the fees and costs is contained in Appendix A. In addition to reimbursement of the allowable costs as set forth above, the Owner shall pay to the Consultant a fixed fee of **\$ 16,012.41** for Title I Services. For Title II Services, if applicable, the Owner shall reimburse the Consultant for allowable direct costs and also pay to the Consultant an amount determined by multiplying the salary rate of the individual(s) performing the Title II Services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier. The Title II Multiplier shall account for all fees and indirect costs associated with Title II services.
- 3.5. *Invoices, Reimbursement, and Partial Payments.* Submission of invoices and payment of the fees shall be made as follows, unless modified by the written agreement of both parties:
 - 3.5.1. Not more often than once per month, the Consultant shall submit to the Owner, in such form and detail as the Owner may require, an invoice or voucher supported by a statement of the claimed allowable costs for performing this Agreement, and estimates of the amount and value of the work accomplished under this Agreement. The invoices for costs and estimates for fees shall be supported by any data requested by the Owner.
 - 3.5.2. In making estimates for fee purposes, such estimates shall include only the amount and value of the work accomplished and performed by the Consultant under this Agreement which meets the standards of quality established under this Agreement. The Consultant shall submit with the estimates any supporting data required by the Owner. At a minimum, the supporting data shall include a progress report in the form and number required by the Owner.

3.5.3. Upon approval of the estimate by the Owner, payment upon properly executed vouchers shall be made to the Consultant, as soon as practicable, of 100 percent of the allowed costs, and of 90 percent of the approved amount of the estimated fee, less all previous payments. Notwithstanding any other provision of this Agreement, only costs and fees determined to be allowable by the Owner in accordance with subpart 31.2 of the Federal Acquisition Regulations (FAR) in effect on the date of this Agreement and under the terms of this Agreement shall be reimbursed or paid.

3.5.4. Before final payment under the Agreement, and as a condition precedent thereto, the Consultant shall execute and deliver to the Owner a release of all claims which are known or reasonably could have been known to exist against the Owner arising under or by virtue of this Agreement, other than any claims that are specifically excepted by the Consultant from the operation of the release in amounts stated in the release.

3.6. *Title I Services, Title II Services, and Contract Ceiling Prices.* The parties agree that aggregate payments under this Agreement, including all costs and fees, shall not exceed the Contract Ceiling Price. The parties further agree that aggregate payments for Title I services under this Agreement, including all costs and fees, shall not exceed the Title I Services Ceiling Price; and that aggregate payments for Title II services under this Agreement, including all costs and fees, shall not exceed the Title II Services Ceiling Price. No adjustment of the Indirect Cost Rate or the Title II Multiplier, claim, or dispute shall affect the limits imposed by these ceiling prices. No payment of costs or fees shall be made above these ceiling prices unless the Agreement is modified in writing.

3.7. *Final payment.*

3.7.1. The Consultant shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than forty-five (45) days (or longer, as the Owner may approve in writing) after the completion date. Upon approval of the completion invoice or voucher, and upon the Consultant's compliance with all terms of this Agreement, the Owner shall promptly pay any balance of allowable costs and any retainage owed to the Consultant. After the release of said retainage Consultant agrees that it will continue to provide consultation services to the Owner as needed through supplemental agreement(s) with respect to the contracted services under this Agreement until all work is completed under both Title I and Title II.

3.7.2. The Consultant shall pay to the Owner any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Consultant or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which the Consultant has been reimbursed by the Owner. Reasonable expenses incurred by the Consultant for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Owner. Before final payment under this Agreement, the Consultant and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

- An assignment to the Owner, in form and substance satisfactory to the Owner, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Consultant has been reimbursed by the Owner under this Agreement; and,
- A release discharging the Owner, its officers, agents, and employees from all liabilities, obligations, and claims which were known or could reasonably have been known to exist arising out of or under this Agreement.

3.8. *Owner's Right to Withhold Payment.* The Owner may withhold payment to such extent as it deems necessary as a result of: (1) third party claims arising out of the services of the Consultant and made against the Owner; (2) evidence of fraud, over-billing, or overpayment; (3) inclusion of non-allowable costs; (4) failure to make prompt payments to subcontractors in the time provided by this Agreement; (5) payment requests received including fees for unapproved subcontractors; and/or (6) the Consultant's default or unsatisfactory performance of services. The withholding of payment under this provision shall in no way relieve the Consultant of its obligation to continue to perform its services under this Agreement.

4. DISALLOWANCE OF COSTS

4.1. Notwithstanding any other clause of this Agreement, the Owner may at any time issue to the Consultant a written notice of intent to disallow specified costs incurred or planned for incurrence under this Agreement that have been determined not to be allowable under the contract terms.

4.2. Failure to issue a notice under this Section shall not affect the Owner's rights to take exception to incurred costs.

4.3. If a subsequent audit reveals that: (1) items not properly reimbursable have, in fact, been reimbursed as direct costs; or (2) that the Indirect Cost Rate contains items not properly reimbursable under the FAR; then, in the case of indirect costs, the Indirect Cost Rate shall be amended retroactively to reflect the actual allowable indirect costs incurred, and, in the case of both direct and indirect costs, the Owner may offset, or the Consultant shall repay to Owner, any overpayment.

5. RECORDS & AUDITS

5.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

5.2. *Examination.* The Consultant shall maintain, and the Owner, AHTD, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Consultant's offices and facilities, or parts of them, engaged in performing the Agreement.

5.3. *Supporting Data.* If the Consultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, AHTD, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Consultant's records, including computations and projections, related to—

- The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;

- Any proposal for the Agreement, subcontract, or modification;
 - Discussions conducted on the proposal(s), including those related to negotiating;
 - Fees or allowable costs under the Agreement, subcontract, or modification;
 - Performance of the Agreement, subcontract or modification; or,
 - The amount and basis of any claim or dispute.
- 5.4. *Audit.* The Owner, AHTD, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Consultant's records involving transactions related to this Agreement or a subcontract hereunder.
- 5.5. *Reports.* If the Consultant is required to furnish cost, funding, or performance reports, the Owner, AHTD, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Consultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 5.6. *Availability.* The Consultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 28, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 5.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 5.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.
- 5.7. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

6. DESCRIPTION OF THE PROJECT

The Project consists of two proposed improvement areas within the Jonesboro Industrial Park. The first area of improvement is located on the North side of the existing Industrial Lead rail between Little Bay Ditch and Nestle Road. The work will include the design of the subgrade and tracks for 2 parallel, double ended spur tracks that will allow an increase in the rail car storage capacity within the Industrial Park. There will also be a Deductive Alternate to construct the additional subgrade for 2 additional spur tracks that would only switch from the East end, adding more rail car storage capacity.

The second area of improvement is located on the South side of the existing Industrial Lead rail between Moore Road and Commerce Drive rail crossings. The existing Post Foods Facility rail spur service will be moved to the East and 2 parallel spur tracks will be constructed back to the facility for service. The switch is being moved to the East to remove the disruption of traffic on Commerce Drive crossing that is currently a major issue in the area. The Consultant will provide the design, review and construction drawings, and provide Construction Administration for the Construction Phase of the Project.

7. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY CONSULTANT

The Consultant, along with the sub-consultants, will provide the Environmental Reports that are required to be reviewed by the Federal Railroad Administration (FRA). The Design Team will prepare Geotechnical Reports that will provide recommendations to properly design the subgrade for the rail based on the soil types and conditions in the areas of improvement. The Design Team will prepare topographic and boundary surveys of the improvement areas. This will ensure that the correct property ownership is maintained, and will also provide the required site data to be used for the rail design and construction bidding documents. The Consultant will provide the Proposal, Measurement & Payment, Technical Specifications, and Geotechnical Report for the Bid Packages. The Consultant will also assist in the advertising, pre-bid meetings, and the bid letting process. After the bidding process is complete, the Consultant will provide recommendations to the City of Jonesboro for awarding contracts.

8. INFORMATION TO BE PROVIDED BY THE OWNER

The City of Jonesboro, AR shall furnish to the Consultant the Agreement, Insurance Requirements, General Conditions, and any other contractual information needed to complete the bid package and specifications that will meet the City's needs for the Project.

9. TITLE II SERVICES TO BE PROVIDED BY CONSULTANT

The Consultant will prepare the Contracts to include Insurance Certificates. The Consultant will schedule and attend the pre-construction conference with Contractors that are awarded the Project. The Consultant will review the Pay Estimates provided by the Contractors and provide all Construction Administrative duties as required by the design. The Consultant and sub-consultant will make visits to the site during construction to inspect the subgrade work for materials and workmanship, and to take soil densities as required to ensure specifications are being met for the construction. Once the subgrade work is complete, the Consultant and sub-consultant will finalize the subgrade and initiate the rail work to proceed. The Consultant will make visits to the site to inspect the rail materials and construction to ensure that all specifications and construction requirements are being met. The Contractors performing the work will be responsible for their own Construction Staking. The Consultant will inspect the work to ensure the rail is being constructed according to the plans and specifications. The Consultant will not provide any as-built drawings of the construction. Once the rail work is complete, the Consultant will attend the Final Inspection with the City staff, BNSF staff, and the Contractors to close out the Project.

10. COORDINATION WITH OWNER

10.1. Throughout the Project, the Consultant shall hold *[monthly]* conferences in JONESBORO, Arkansas, or such other location as designated by the Owner, with representatives of the Owner, the AHTD, and the FHWA so that as the Project progresses, the Consultant shall have full benefit of the Owner's knowledge of existing needs and facilities and be consistent with the Owner's current policies and practices. The extent and character of the work to be done by the Consultant shall be subject to the general oversight and approval of the Owner.

11. OFFICE LOCATION FOR REVIEW OF WORK

11.1. Review of the work as it progresses and all files and documents produced under this Agreement may be made by representatives of the Owner, the AHTD, and the FHWA at

the project office of the Consultant located in 100 North Rodney Parham Rd Ste 2B, Little Rock, AR 72205 between the hours of 8 am and 5 pm, Monday thru Friday.

12. ACCESS TO PROPERTY

12.1. The Consultant's services to the Owner may require entry upon private property. The Owner will present or mail to private landowners a letter of introduction and explanation, describing the work, which shall be drafted by the Consultant. The Consultant will make reasonable attempts to notify resident landowners who are obvious and present when the Consultant is in the field. The Consultant is not expected to provide detailed contact with individual landowners. The Consultant is not expected to obtain entry by means other than the consent of the landowner. If the Consultant is denied entry to private property by the landowner, the Consultant will not enter the property. If denied entry to the property, the Consultant shall notify the Owner and advise the Owner of an alternate evaluation method if one is feasible. The Owner shall decide on the course of action to obtain access to the property.

13. DELIVERABLES

The Consultant and/or Design Team shall provide the Environmental Reports, Land Surveying documents and drawings, Geotechnical Report, Field Density Reports, Industrial Rail Spur Design Drawings & Specifications, and related Bidding Documents.

14. SUBCONTRACTING

14.1. Unless expressly disclosed in Appendix B, the Consultant may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.

14.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Consultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Consultant of any responsibility, obligation, or duty under this Agreement.

14.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.

14.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.

14.5. *Prompt Payment.* The Consultant shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the Consultant. Any retainage payments held by the Consultant must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the Consultant. If the Consultant fails to comply with this provision, in addition to any other rights or

remedies provided under this Agreement, the Owner, at its sole option and discretion, may:

- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the Consultant;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the Consultant until the Consultant ensures that the subcontractors have been and will be promptly paid for work performed.

14.6. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

15. RESPONSIBILITY OF THE CONSULTANT

15.1. Notwithstanding any review, approval, acceptance, or payment by the Owner, the Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

15.2. The Consultant shall demonstrate to the Owner the presence and implementation of quality assurance in the performance of the Consultant's work. The Consultant shall identify individual(s) responsible, as well as methods used to determine the completeness and accuracy of drawings, specifications, and cost estimates.

15.3. The Consultant further agrees that in its performance of work under this Agreement, it shall adhere to the requirements in the Design Standards of the AHTD and FHWA, which shall be incorporated herein by reference.

15.4. The Owner shall have the right at any time and in its sole discretion to submit for review all or any portion of the Consultant's work to consulting engineers engaged by the Owner for that purpose. The Consultant shall fully cooperate with any such review.

15.5. The Consultant and any subcontractor shall employ qualified and competent personnel to perform the work under this Agreement.

15.6. Neither the Owner's review, approval, or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement. The Consultant shall be and remain liable to the Owner for all damages to the Owner caused by the Consultant's negligent performance of any of the services furnished under this Agreement.

15.7. The rights and remedies of the Owner provided under this Agreement are in addition to any other rights and remedies provided by law.

15.8. If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

16. WARRANTY OF SERVICES

- 16.1. *Definitions. Acceptance*, as used in this Agreement, means the act of an authorized representative of the Owner by which the Owner approves specific services, as partial or complete performance of the Agreement. *Correction*, as used in this Agreement, means the elimination of a defect.
- 16.2. Notwithstanding inspection and acceptance by the Owner or any provision concerning the conclusiveness thereof, the Consultant warrants that all services performed and work product under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement.
- 16.3. If the Consultant is required to correct or re-perform, it shall be at no cost to the Owner, and any services corrected or re-performed by the Consultant shall be subject to this Section to the same extent as work initially performed. If the Consultant fails or refuses to correct or re-perform, the Owner may, by contract or otherwise, correct or replace with similar services and charge to the Consultant the cost occasioned to the Owner thereby, or make an equitable adjustment in the Contract Price.
- 16.4. If the Owner does not require correction or re-performance, the Owner shall make an equitable adjustment in the Contract Price.
- 16.5. Nothing within this Section shall constitute a waiver or exclusion of any other right or remedy that the Owner may possess at law or under this Agreement.

17. TERM, COMMENCEMENT, AND COMPLETION

- 17.1. This Agreement shall commence on the effective date set forth above and remain in effect until the completion of the Consultant's Scope of Services, as defined herein, to be completed **by NOVEMBER 2020**, unless extended or terminated by the Owner in accordance with this Agreement.
- 17.2. The Consultant shall begin work under the terms of this Agreement within ten (10) days of receiving written notice to proceed. [If services are to be performed in subsequent phases, then each phase shall be commenced upon the Owner's approval of the previous phase. The Consultant shall not be entitled to any compensation or reimbursement for services performed in a phase unless and until it has received approval from the Owner to proceed with such services.]
- 17.3. It is further agreed that time is of the essence in performance of this Agreement. The Consultant shall complete the work, or each phase, as scheduled, and the Owner shall provide any required approval of the work or phase meeting the requirements contained herein in a reasonable and timely manner. The Project shall be completed as follows:
- Upon Execution of the Contract, the Consultant shall authorize the Sub-Consultants to begin their work, which includes geotechnical testing, land surveying, and environmental studies. The reports are scheduled to be completed in December 2019. The Consultant will be completing and submitting the New Business Review (NBR) print to the BNSF Railroad during this time as well. In January 2020, the BNSF NBR approval should be complete as well as the recommendations for the rail subgrade design. The Consultant will submit the 30% rail construction drawings for approval to the BNSF near the end of February 2020, and the 60% rail construction drawings should be approved by the end of March 2020. The 90% rail construction drawings and the Project advertisement of bids will be in April 2020. The Project bid date will be end of April 2020, with the subgrade construction phase starting near June 1, 2020. The Consultant estimates the

total construction time being approximately 5 months, with the Final Inspection taking place by November 2020.

18. TERMINATION

- 18.1. The Owner may terminate this Agreement in whole or, from time to time, in part, for the Owner's convenience or because of the Default of the Consultant.
- 18.2. The Owner shall terminate this Agreement by delivering to the Consultant written notice of the termination.
- 18.3. Upon receipt of the notice, the Consultant shall:
 - Immediately discontinue all services affected (unless the notice directs otherwise).
 - Deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.
 - Terminate all subcontracts to the extent they relate to the work terminated.
 - In the sole discretion and option of the Owner, and if and only if requested to do so, assign to the Owner all right, title, and interest of the Consultant under the subcontracts terminated, in which case the Owner shall have the right to settle any claim or dispute arising out of those subcontracts without waiver of any right or claim the Owner may possess against the Consultant.
 - With approval or ratification by the Owner, settle all outstanding liabilities arising from the termination of subcontracts, the cost of which would be allowable in whole or in part, under this Agreement.
 - Complete performance of any work not terminated.
 - Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Consultant and in which the Owner has or may acquire an interest.
- 18.4. If the termination is for the convenience of the Owner, the Owner shall make an equitable adjustment in the Contract Price, subject to the Ceiling Prices and Funding Limitations provisions, *but shall allow no anticipated fee or profit on unperformed services.*
- 18.5. If the termination is for the Consultant's Default, the Owner may complete the work by contract or otherwise and the Consultant shall be liable for any reasonable and necessary additional cost incurred by the Owner to the extent caused by Consultant's default.
- 18.6. Disputes and claims arising from termination of this Agreement shall be governed by Section 28, Disputes and Claims.
- 18.7. The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy.

19. STOP WORK ORDERS

19.1. The Owner may, at any time, by written order to the Consultant, require the Consultant to stop all, or any part, of the work called for by this Agreement for a period of up to 90 days after the order is delivered to the Consultant, and for any further period to which the parties may agree. Upon receipt of the order, the Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Consultant, or within any extension of that period to which the parties shall have agreed, the Owner shall either—

19.1.1. Cancel the stop work order; or

19.1.2. Terminate the work pursuant to Section 18, Termination.

19.2. If a stop work order issued under this Section is canceled or the period of the order or any extension thereof expires, the Consultant shall resume work. The Owner shall make an equitable adjustment in the delivery schedule or Contract Price, or both, and the Agreement shall be modified in writing accordingly, if—

- The stop work order was not issued because of Consultant's Default in its performance of its obligations under any part of this Agreement; and,
- The stop work order results in an increase in the time required for, or in the Consultant's cost properly allocable to, the performance of any part of this Agreement; and,
- The Consultant provides Notice of Potential Claim pursuant to Section 28, Disputes and Claims.

20. CHANGES

20.1. The Owner may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement, including but not limited to: (1) drawings, designs, or specifications; (2) time of performance (i.e., hours of the day, days of the week, etc.); and (3) places of inspection, delivery, or acceptance.

20.2. If any such change causes an increase *or decrease* in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, the Owner shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fee; and (3) other affected terms.

20.3. All claims and disputes shall be governed by the Section 28, Disputes and Claims. As provided in Section 28, the Consultant must provide written notice of its intention to make a claim for additional compensation before beginning the work on which the claim is based. If such notice is not given, the Consultant hereby agrees to waive any claim for such additional compensation.

20.4. Failure to agree to any adjustment shall be a dispute under Section 28, Disputes and Claims. *However, nothing in this Section or any other provision of this Agreement shall excuse the Consultant from proceeding with the Agreement as changed.*

21. OWNERSHIP OF DOCUMENTS & DATA

21.1. All project documents and data, regardless of form and including but not limited to original drawings, disks of CADD drawings, cross-sections, estimates, files, field notes, and data, shall be the property of the Owner. The Consultant shall further provide all documents and data to the Owner upon the Owner's request. The Consultant may retain reproduced copies of drawings and other documents. In the event that any patent rights or copyrights are created in any of the documents, data compilations, or any other work product, the Owner shall have an irrevocable license to use such documents, or data compilations, or work product.

22. PATENT AND COPYRIGHT INFRINGEMENT

22.1. The Consultant shall report to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Consultant has knowledge.

22.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Consultant shall furnish to the Owner, when requested by the Owner, all evidence and information in possession of the Consultant pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Consultant.

22.3. The Consultant agrees to include, and require inclusion of, the provisions of this Section in all subcontracts at any tier for supplies or services.

22.4. The Consultant shall indemnify the Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Owner of such supplies or construction work.

22.5. This indemnity shall not apply unless the Consultant shall have been informed within ten (10) business days following the Owner's receipt of legal notice of any suit alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Consultant, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Consultant, unless required by final decree of a court of competent jurisdiction.

23. BANKRUPTCY

23.1. In the event the Consultant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Consultant agrees to furnish, by certified mail, written notice of the bankruptcy to the Owner. This notice shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notice shall include the

date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of AHTD job numbers and FAP numbers for all contracts with Owner against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

24. FUNDING LIMITATIONS

24.1. The Owner's obligations under this Agreement are contingent upon the availability of appropriated funds from which payments under the terms of this Agreement can be made in this and each subsequent fiscal year for the duration of the Agreement. No legal liability on the part of the Owner of any kind whatsoever under this Agreement shall arise until funds are made available to the Owner for performance of this Agreement, including those to be appropriated and provided by the State of Arkansas and those to be provided by the United States.

25. SUCCESSORS AND ASSIGNS

25.1. This Agreement shall be binding upon the parties and their successors and assigns, and except as expressly set forth herein, neither the Owner nor the Consultant may assign, delegate, or transfer any benefit or obligation under this Agreement without the express written consent of the other party. Nothing herein shall be construed as a waiver of any immunity or as creating any personal liability on the part of any officer or agent of the Owner or any other governmental entity either made a party to, or having any interest in, this Agreement.

26. INDEMNITY AND RESPONSIBILITY FOR CLAIMS AND LIABILITY

26.1. *Indemnity.* The Consultant shall hold harmless and indemnify the Owner and the AHTD, their officers, employees, and agents, from and for all claims and liabilities stemming from any wrongful (whether negligent, reckless, or intentional) acts or omissions on the part of the Consultant and its subcontractors, and their agents and employees.

26.2. *No Personal Liability.* No director, officer, manager, employee, agent, assign, or representative of the Owner or the AHTD shall be liable to the Consultant in a personal or individual capacity under any term of this Agreement, because of any breach thereof, or for any act or omission in its execution or performance.

26.3. *Independent Contractor Relationship.* The parties intend that the Consultant shall be an independent contractor of the Owner and that the Consultant shall be liable for any act or omission of the Consultant or its agents, employees, or subcontractors arising under or occurring during the performance of this Agreement. No act or direction of the Owner shall be deemed to be an exercise of supervision or control of the Consultant's performance.

27. INSURANCE

27.1. *Professional Liability Insurance Coverage.* The Consultant shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts arising out of the performance of this Agreement in an amount per claim of not less than five (5) times the original Contract Ceiling Price or \$1,000,000, whichever is less. Such insurance shall extend to the

Consultant and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of the Consultant's subcontractors, agents, and employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the Consultant or alleged to have been committed by the Consultant or any person for whom the Consultant is legally responsible.

- 27.2. *Deductible.* The Consultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Owner if, in the judgment and opinion of the Owner, the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The Consultant shall submit promptly to the Owner, upon request as often as quarterly, detailed financial statements and any other information requested by the Owner to reasonably determine whether or not the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.
- 27.3. *Worker's Compensation Insurance.* The Consultant shall at all times during the Term of this Agreement maintain Worker's Compensation and Employers Liability Insurance as required under Arkansas law.
- 27.4. *General Liability Insurance.* The Consultant shall at all times during the term of this Agreement maintain comprehensive general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles. The Consultant's insurance coverage shall also cover restoration of plans, drawings, field notes, and other documents in the event of their loss or destruction while in the custody of the Consultant.
- 27.5. *Insurance Policies and Certificates.* The Consultant shall provide the Owner upon request copies of its insurance policies and evidence satisfactory to the Owner concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, the Consultant shall furnish to the Owner certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The Consultant's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which Owner, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- 27.6. *Additional Insurance Requirements.* All insurance maintained by the Consultant pursuant to this Section shall be written by insurance companies licensed to do business in Arkansas, in form and substance satisfactory to the Owner, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the Owner.
- 27.7. *Duration of Insurance Obligations.* The Consultant shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the project or the completion of the Consultant's services under this Agreement, whichever comes later. Comprehensive General Liability Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of the Consultant's services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the project or completion of the Consultant's services, whichever comes first.

27.8. *Consultant's Insurance Primary.* All insurance policies maintained by the Consultant pursuant to this Agreement shall provide that the consultant's insurance shall be primary and the Owner's own insurance shall be non-contributing.

27.9. *Additional Insured.* All liability insurance policies, except the professional liability policy, maintained by the Consultant pursuant to this Agreement shall be endorsed to include the Owner, its officers, directors, managers, employees, agents, assigns and representatives, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Owner.

28. DISPUTES AND CLAIMS

28.1. *Notice of Potential Claim.* Whenever a Consultant deems that any additional compensation is due, the Consultant shall notify the Owner in writing of its intention to make a claim for additional compensation ("Notice of Potential Claim") **before beginning the work that gives rise to the claim.**

28.2. *Time & Manner for Submitting Claim.* All disputes and claims shall first be submitted in writing to the Owner within 45 calendar days after the completion or termination date. **The Consultant hereby agrees that the failure to submit the dispute or claim to the Owner prior to 45 calendar days after the completion or termination date shall constitute a waiver of the dispute or claim.**

28.3. *Form.* All disputes and claims must be submitted in writing and in sufficient detail to permit the Owner to determine the basis for entitlement and the actual allowable costs incurred. Each claim must contain:

- A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim;
- The date the actions resulting in the claim occurred or conditions resulting in the claim became evident;
- A copy of the "Notice of Potential Claim";
- The name, title, and activity of each Owner's employee knowledgeable about facts that gave rise to such claim;
- The name, title, and activity of each Consultant, Subcontractor, or employee knowledgeable about the facts that gave rise to the claim;
- The specific provisions of the Agreement that support the claim and a statement why such provisions support the claim;
- The identification and substance of any relevant documents, things, or oral communications related to the claim;
- A statement whether the claim is based on provisions of the Agreement or an alleged breach of the Agreement;
- If an extension of time is sought, the specific number of days sought and the basis for the extension;

- The amount of additional compensation sought and a specific cost breakdown of the amount claimed; and,
- Any other information or documents that are relevant to the claim.

28.4. *Decision and Appeal.* The decision of the Owner shall be final and conclusive.

28.5. *Continued Performance.* Pending final resolution of a dispute or claim, unless the Owner has terminated this Agreement pursuant to Section 18 or issued a stop work order pursuant to Section 19, the Consultant shall proceed diligently with the performance of this Agreement in accordance with the Owner's decisions.

28.6. The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy. If the Owner decides the facts justify the action, the Owner may, at its sole option and discretion, receive and act upon a proposal, dispute, or claim submitted at any time before final payment under this Agreement.

29. COVENANT AGAINST CONTINGENCY FEES

29.1. The Consultant warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

29.2. *Bona fide agency*, as used in this Section, means an established commercial or selling agency, maintained by the Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.

29.3. *Bona fide employee*, as used in this Section, means a person, employed by the Consultant and subject to the Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.

29.4. *Contingent fee*, as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.

29.5. *Improper influence*, as used in this Section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

30. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Agreement, the Consultant, for itself, its successors, and its assigns, certifies and agrees as follows:

- 30.1. *Compliance with Regulations.* The Consultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.
- 30.2. *Nondiscrimination.* The Consultant, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- 30.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Consultant for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 30.4. *Information and Reports.* The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, and accounts, other sources of information, and its facilities by the Owner, the AHTD, or the FHWA to be pertinent to ascertain compliance with such regulations and directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Owner, the AHTD or the FHWA, as appropriate, and shall set forth the efforts made by the Consultant to obtain the records or information.
- 30.5. *Sanctions for Noncompliance.* In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such contract sanctions as it, the AHTD, or the FHWA may determine to be appropriate, including but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies with the provisions and cancellation, termination, or suspension of the Agreement, in whole or in part.
- 30.6. *Incorporation of Provisions.* The Consultant shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Owner, the AHTD, or FHWA may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, however that, in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Consultant may request the Owner, the AHTD, or the United States to enter into the litigation to protect the interests of the State and the United States, respectively.

31. **DBE CLAUSE**

31.1. The Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the performance of this Agreement. The Consultant shall comply with the applicable requirements of 49 C.F.R. Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Consultant to comply with or perform these requirements is a material breach of this Agreement, which may result in the cancellation, termination, or suspension of this Agreement in whole or in part, or such other remedy that the Owner may determine appropriate.

31.2. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

32. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)

32.1 The Consultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.

32.2 The Consultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.

32.3 In accordance with Section 504 regulations 49 C.F.R. Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

33. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

33.1. The Consultant certifies, to the best of its knowledge and belief, that—

33.1.1. The Consultant and any of its Principals—

33.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;

33.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

33.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in Subsection 33.1.1.2; and,

- 33.1.1.4. The Consultant has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.
- 33.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code, as well as any other applicable federal and state laws.
- 33.3. The Consultant shall provide immediate written notice to the Owner if, at any time prior to contract award, the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 33.4. The certification in Subsection 33.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Consultant knowingly rendered an erroneous certification, the Owner may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the Owner.

34. MISCELLANEOUS

- 34.1. *General Compliance with Laws*. The Consultant shall comply with all Federal, State, and local laws, regulations, and ordinances applicable to the work, including but not limited to, the Americans with Disabilities Act and Occupational Safety and Health Act as amended.
- 34.2. *Registered Professional Engineer's Endorsement*. All plans, specifications, estimates, and engineering data provided by the Consultant shall be endorsed and recommended by an authorized representative of the Consultant, who shall be a registered Professional Engineer licensed in the State of Arkansas.
- 34.3. *Choice of Law*. This Agreement shall be governed by the laws of the State of Arkansas without consideration of its choice of law provisions.
- 34.4. *Choice of Forum*. The Consultant agrees that any cause of action stemming from or related to this Agreement, including but not limited to disputes or claims arising under this Agreement, for acts or omissions in the performance, suspension, or termination of this Agreement, whether sounding in contract or tort, equity or law, may only be brought in the appropriate forum within State of Arkansas.
- 34.5. *No Waiver of Immunity*. The Owner expressly does not waive any defense of immunity that it may possess under either federal or state law, and no provision in this Agreement shall be construed to constitute such a waiver in whole or in part.
- 34.6. *Conflicts Between Laws, Regulations, and Provisions*. In the event of conflicting provisions of law, the interpretation shall be governed by the following in this order, from most controlling to least: Federal law and regulations, State law and regulations, Department and FHWA Design Standards, and this Agreement.
- 34.7. *Severability*. If any term or condition of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, all remaining terms of this Agreement shall remain valid and enforceable unless one or both of the parties would be materially prejudiced.

34.8. *No-Waiver.* The failure of the Owner to strictly enforce any term of this Agreement shall not be construed as a waiver of the Owner's right to require the Consultant's subsequent performance of the same or similar obligation or duty.

34.9. *Modification and Merger.* This written Agreement and any provisions incorporated by reference reflect the entire agreement of the parties and may be modified only by the express written agreement of both parties.

35. CERTIFICATION OF AUTHORIZED REPRESENTATIVES

35.1. This Agreement and the certifications contained herein or attached hereto constitute the whole Agreement of the parties, and each party certifies that this Agreement and any attached certification have been executed by their duly authorized representatives.

36. NOTICE

36.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be addressed to either the Owner's Representative or the Consultant's Representative, and mailed or hand-delivered to:

36.1.1. To the Owner's Representative:

HAROLD PERRIN, MAYOR
City of Jonesboro
300 S. Church Street
Jonesboro, AR 72401

36.1.2. To the Consultant:

W. WILLIAM GRAHAM JR., INC.
Attn: MR. ROBERT B. GRAHAM
100 N. Rodney Parham Rd (Ste 2B)
Little Rock, AR 72205
Ph: (501)227-0078

IN WITNESS WHEREOF, the parties execute this Agreement, to be effective upon the date set out above.

(CONSULTANT NAME)

(OWNER'S NAME)

BY: _____
ROBERT B GRAHAM
President

BY: _____
HAROLD PERRIN
Mayor

ATTEST: _____
DONNA JACKSON
City Clerk

APPENDICES

| | |
|------------|---|
| APPENDIX A | JUSTIFICATION OF FEES AND COSTS |
| APPENDIX B | SUBCONTRACTS |
| APPENDIX C | STANDARD CERTIFICATIONS C-1 [CONSULTANT] C-2 [SUBCONSULTANT] C-3 Arkansas Highway Commission |
| APPENDIX D | PROJECT SCHEDULE |
| APPENDIX E | GENERAL AND DETAILED SCOPE OF WORK FOR CONTROL SURVEYS, DESIGN SURVEYS, AND LAND SURVEYS |

APPENDIX A
- TITLE 1 SERVICES -

| ITEM | PRINCIPAL ENG/MANAGER | DESIGN ENGINEER | MILEAGE |
|--|------------------------------|------------------------|----------------|
| 1) Preparing Contract | 8 | 3 | 300 |
| 2) Contract Review, Execution | 2 | 2 | |
| 3) Agreements w/ Sub-Consultants | 12 | 4 | |
| 4) Kick-off meeting w/ City of Jonesboro & FRA | 8 | 4 | 300 |
| 5) Kick-off meeting w/ Sub-Consultants | 16 | 4 | 300 |
| 6) On-site meetings with Sub-Consultants | 32 | 4 | 1,200 |
| 7) Review/Assist on Environmental Report | 12 | 4 | |
| 8) Survey & Topographic data review | 8 | 8 | |
| 9) Property Purchase w/ City staff | 8 | 4 | 300 |
| 10) Geotech Report review & discussion | 8 | 4 | |
| 11) Meetings w/ Rail Users | 32 | 4 | 1,200 |
| 12) Meetings w/ BNSF RR and FRA | 24 | | 900 |
| 13) NBR Print (BNSF) | 16 | 24 | 300 |
| 14) Rail Design/Plans (30%, 60%, 90%) | 32 | 80 | 600 |
| 15) Utility adjustments | 16 | 4 | 300 |
| 16) Plan Review (BNSF, FRA, City of Jonesboro) | 32 | 32 | |
| 17) Prepare Bid Package | 40 | 40 | |
| 18) Review Bid Package w/ City of Jonesboro | 8 | | 300 |
| 19) Pre-bid meeting | 8 | | 300 |
| 20) Contractor Bid Questions & Clarifications | 24 | 12 | |
| 21) Bid Letting Process | 8 | | 300 |
| 22) Check Bids, Recommendation Letter | 8 | 4 | |
| | 362 | 241 | 6,600 |

APPENDIX A
- TITLE 1 SERVICES -

Cont.

| | | |
|----------------------|----------------------|----------------------|
| Principal Engineer | 362 hr * 61.02 | \$ 22,089.24 |
| Design Engineer | 241 hr * 61.26 | \$ 14,763.66 |
| | <i>SUBTOTAL</i> | \$ 36,852.29 |
| Payroll Expenses | (23% of subtotal) | \$ 8,476.03 |
| | <i>SUBTOTAL</i> | \$ 45,328.32 |
| Overhead | (97% of subtotal) | \$ 43,968.47 |
| | TOTAL | \$ 89,296.69 |
| Supplies | | \$ 250.00 |
| Printing | | \$ 500.00 |
| Mileage | 6,600 * 0.58 | \$ 3,828.00 |
| NEPA Report/Study | | \$ 20,877.00 |
| Geotech Report/Study | | \$ 3,735.00 |
| Land surveying | | \$ 14,950.00 |
| | <i>SUBTOTAL</i> | \$ 133,436.79 |
| Fixed Fee Profit | (12% of subtotal) | \$ 16,012.41 |
| | TOTAL | \$ 149,449.20 |
| | NOT TO EXCEED | \$ 155,000.00 |
| | | |
| | | |
| | | |
| | | |
| | | |

APPENDIX A
- TITLE II SERVICES -

| ITEM | PRINCIPAL ENG/MANAGER | DESIGN ENGINEER | MILEAGE |
|---|------------------------------|------------------------|----------------|
| 1) Award of Bid | 4 | | |
| 2) Contract Preperation | 8 | 8 | |
| 3) Pre-Construction Meeting | 8 | | 300 |
| 4) Onsite meeting w/ sub-consultants | 8 | 4 | 300 |
| 5) Site visits during Subgrade construction | 120 | | 4,500 |
| 6) Contract Administration | 24 | 24 | |
| 7) Subgrade Final Inspection/docs | 8 | | 300 |
| 8) Site visits during Rail construction | 80 | | 3,000 |
| 9) Contract Administration | 16 | 24 | |
| 10) Final inspection w/ BNSF RR, and FRA | 8 | | 300 |
| 11) Final inspection w/ City | 8 | | 300 |
| 12) As-built inspection | 8 | 40 | |
| | 300 | 100 | 9,000 |

- Construction-

| | | |
|--------------------|----------------------|----------------------|
| Principal Engineer | 300 hr * 61.02 | \$ 18,306.00 |
| Design Engineer | 100 hr * 61.26 | \$ 6,126.00 |
| | <i>SUBTOTAL</i> | \$ 24,432.00 |
| Payroll Expenses | (23% of subtotal) | \$ 5,619.36 |
| | <i>SUBTOTAL</i> | \$ 30,051.36 |
| Overhead | (97% of subtotal) | \$ 29,149.82 |
| | TOTAL | \$ 59,201.18 |
| Supplies | | \$ 200.00 |
| Printing | | \$ 200.00 |
| Mileage | 9,000 * 0.58 | \$ 5,220.00 |
| Geotech Services | | \$ 19,414.00 |
| | <i>SUBTOTAL</i> | \$ 84,235.18 |
| Fixed Fee Profit | (12% of subtotal) | \$ 10,108.22 |
| | TOTAL | \$ 94,343.40 |
| | NOT TO EXCEED | \$ 100,000.00 |

APPENDIX B1

SUBCONSULTANT AGREEMENT

JOB NO. _____

FEDERAL AID PROJECT ("FAP") NO. _____

1. SUBCONSULTANT AGREEMENT

- 1.1. The services to be performed under this Subconsultant Agreement will be performed in connection with the Agreement for Engineering Services ("Prime Agreement") between the Consultant and the **CITY OF JONESBORO, AR** ("Owner") for Job No. _____, dated _____, **W. WILLIAM GRAHAM JR., INC.** ("Consultant") and **CRAFTON TULL** ("Subconsultant") hereby agree that the Subconsultant shall perform the professional and related services as described herein. In consideration for the performance of the professional services the Consultant agrees to compensate (and reimburse, if applicable) the Subconsultant in the manner and at the rate(s) provided herein.
- 1.2. The definitions of the Prime Agreement, and its provisions relating to the obligations, duties, and rights of subcontractors, *or which are otherwise required to be inserted into any subcontracting agreements*, are deemed to be part of, and are hereby incorporated by reference into, this Subconsultant Agreement and made binding upon the Subconsultant.

2. DESCRIPTION OF PROJECT AND SERVICES TO BE PROVIDED

Environmental Schedule for Federal Railroad Administration (FRA) Catagorical Exclusion documentation.

3. COSTS, FEES, PAYMENTS AND RATE SCHEDULES

See Exhibit "A" – Fee estimate

4. COMPENSATION SUBJECT TO LIMITATIONS OF FEDERAL AND STATE LAW

- 4.1. The Project (as defined in the Prime Agreement), part of which is to be performed under this Subconsultant Agreement, is a federally-assisted project and federal funds will be used, in part, to pay the Consultant and Subconsultant. Therefore, notwithstanding any provision of this Subconsultant Agreement or the Prime Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of 48 C.F.R. Part 31, including those relating to determination of indirect cost rates, if applicable. The Subconsultant shall certify the accuracy of all invoices, requests for payment, and cost rates (if applicable), along with supporting documentation and any supporting information or records provided prior to, during, or after the term of this Subconsultant Agreement.

5. COMMISSION, AHTD, AND FHWA AS THIRD PARTY BENEFICIARIES

- 5.1. This Subconsultant Agreement is between and binding upon only the Consultant and Subconsultant. The Commission, AHTD, and FHWA are not parties to this Subconsultant Agreement, but are expressly made third-party beneficiaries of this

Subconsultant Agreement and shall be entitled to enforce any obligation of the Subconsultant owed to the Consultant. No provision of this Subconsultant Agreement or the Prime Agreement, nor the exercise of any right thereunder, shall be construed as creating any obligation or any liability on the part of, or operating as a waiver of any immunity of, the Commission, the AHTD, the FHWA, or any of their employees, officers, or agents.

- 5.2. The Subconsultant's sole recourse, if any, for any injury arising under or related to this Subconsultant Agreement, the performance of services hereunder, or compensation or claims hereunder, shall be against the Consultant.
- 5.3. The Disputes and Claims provisions of the Prime Agreement shall not apply to this Subconsultant Agreement.

6. RECORDS & AUDITS

- 6.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 6.2. *Examination.* The Subconsultant shall maintain, and the Owner, AHTD, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Subconsultant's offices and facilities, or parts of them, engaged in performing the Agreement.
- 6.3. *Supporting Data.* If the Subconsultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, AHTD, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Subconsultant's records, including computations and projections, related to—
 - The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
 - Any proposal for the Agreement, subcontract, or modification;
 - Discussions conducted on the proposal(s), including those related to negotiating;
 - Fees or allowable costs under the Agreement, subcontract, or modification;
 - Performance of the Agreement, subcontract or modification; or,
 - The amount and basis of any claim or dispute.
- 6.4. *Audit.* The Owner, AHTD, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Subconsultant's records involving transactions related to this Agreement or a subcontract hereunder.

- 6.5. *Reports.* If the Consultant is required to furnish cost, funding, or performance reports, the Owner, AHTD, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Consultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 6.6. *Availability.* The Consultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 28, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 6.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 6.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.

7. SUBCONTRACTING

- 7.1. Unless expressly disclosed in Appendix B, the Subconsultant may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 7.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Subconsultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Subconsultant of any responsibility, obligation, or duty under this Agreement.
- 7.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 7.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 7.5. *Prompt Payment.* The Subconsultant shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Consultant to the Subconsultant. Any retainage payments held by the Subconsultant must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the Subconsultant. If the Subconsultant fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:

- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the Subconsultant;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the Subconsultant until the Subconsultant ensures that the subcontractors have been and will be promptly paid for work performed.

8. COVENANT AGAINST CONTINGENCY FEES

- 8.1. The Subconsultant warrants that no person or agency has been employed or retained to solicit or obtain this Subconsultant Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the AHTD and Consultant shall have the right to annul this Subconsultant Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.
- 8.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the Subconsultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 8.3. *Bona fide employee*, as used in this section, means a person, employed by the Subconsultant and subject to the Subconsultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 8.4. *Contingent fee*, as used in this section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 8.5. *Improper influence*, as used in this section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

9. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Subconsultant Agreement, the Subconsultant, for itself, successors, and assigns, certifies and agrees as follows:

- 9.1. *Compliance with Regulations*. The Subconsultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Subconsultant Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to

discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

- 9.2. *Nondiscrimination.* The Subconsultant, with regard to the work performed by it during the term of this Subconsultant Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Subconsultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- 9.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Subconsultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Subconsultant of the Subconsultant's obligations under this Subconsultant Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 9.4. *Information and Reports.* The Subconsultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, and accounts, other sources of information, and its facilities as may be determined by the Owner, the AHTD, or the FHWA to be pertinent to ascertain compliance with such regulations and directives. Where any information required of the Subconsultant is in the exclusive possession of another who fails or refuses to furnish this information, the Subconsultant shall so certify to the Owner, the AHTD or the FHWA, as appropriate, and shall set forth the efforts made by the Subconsultant to obtain the records or information.
- 9.5. *Sanctions for Noncompliance.* In the event of the Subconsultant's noncompliance with the nondiscrimination provisions of this Subconsultant Agreement, the Owner shall impose such contract sanctions as it, the AHTD, or the FHWA may determine to be appropriate, including but not limited to, withholding of payments to the Consultant or Subconsultant under the Agreement until the Subconsultant complies with the provisions and/or cancellation, termination, or suspension of the Subconsultant Agreement, in whole or in part.
- 9.6. *Incorporation of Provisions.* The Subconsultant shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Subconsultant shall take such action with respect to any subcontract or procurement as the Owner, the AHTD, or FHWA may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, however that, in the event the Subconsultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Subconsultant may request the Owner, the AHTD, or the United States to enter into the litigation to protect the interests of the State and the United States, respectively.

10. DBE CLAUSE

- 10.1. The Subconsultant shall not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the performance of this Subconsultant Agreement. The Subconsultant shall comply with the applicable requirements of 49 C.F.R. Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Subconsultant to comply with or perform these requirements is a material breach of this Subconsultant Agreement, which may

result in the cancellation, termination, or suspension of this Subconsultant Agreement in whole or in part, or such other remedy that the AHTD may determine appropriate.

11. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)

- 11.1. The Subconsultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 11.2. The Subconsultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 11.3. In accordance with Section 504 regulations 49 C.F.R. Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

12. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- 12.1. The Subconsultant (**Crafton Tull**) certifies, to the best of its knowledge and belief, that—
- 12.1.1. The Subconsultant and any of its Principals (**Mr. Jerry Kelso**) —
- 12.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;
- 12.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 12.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 12.1.1.2; and,
- 12.1.1.4. The Subconsultant has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.
- 12.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or

fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.

12.3. The Subconsultant shall provide immediate written notice to the AHTD if, at any time prior to contract award, the Subconsultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

12.4. The certification in subsection 12.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Subconsultant knowingly rendered an erroneous certification, the AHTD may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the AHTD.

13. NOTICE

13.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be mailed or hand-delivered to:

13.1.1. To the Subconsultant:

**CRAFTON TULL
Att: Mr. Jerry Kelso
10825 Financial Centre Parkway (Suite 300)
Little Rock, AR 72211
(501)664-3245**

13.1.2. To the Consultant:

**W. WILLIAM GRAHAM JR., INC.
100 N. Rodney Parham Rd (Suite 2B)
Little Rock, AR 72205
(501)227-0078**

IN WITNESS WHEREOF, the parties execute this Subconsultant Agreement, to be effective _____.

(CONSULTANT NAME)

(SUBCONSULTANT NAME)

BY: _____
Robert B. Graham
President

BY: _____
Jerry Kelso
Executive Vice President

Proposed Environmental Schedule for FRA Categorical Exclusion

| Date | Description |
|------------|--|
| 10/15/2019 | Crafton Tull starts field work |
| 11/5/2019 | Crafton Tull submits reports developed based on field work to Client and FRA |
| 11/19/2019 | Client and FRA sends comments on reports back to Crafton Tull |
| 12/3/2019 | Crafton Tull responds to Client's and FRA's comments |
| 12/10/2019 | Crafton Tull submits reports developed based on field work to regulatory agencies. |
| 12/12/2019 | Public Involvement Meeting |
| 2/10/2020 | Estimated date of comments from regulatory agencies |
| 3/2/2020 | Crafton Tull submits draft of Categorical Exclusion to Client and FRA |
| 3/23/2020 | Client and FRA sends comments on draft of Categorical Exclusion |
| 3/30/2020 | Crafton Tull responds to comments on draft of Categorical Exclusion |
| 4/6/2020 | Crafton Tull submits final draft of Categorical Exclusion to Client for FRA approval |
| 4/20/2020 | Categorical Exclusion approved by FRA |
| 4/27/2020 | Final design and right-of-way acquisition can begin |

**EXHIBIT A
FEE ESTIMATE
FRA Categorical Exclusion - Jonesboro, AR
Crafton, Tull & Associates, Inc.**



September 9, 2019

PROJECT SUMMARY

| LABOR - ENVIRONMENTAL | HRS | Rate (\$) | TOTAL (\$/hr) |
|---|------------|------------------|----------------------|
| Background Research | | | |
| Desktop Review | 2 | \$85.00 | \$170.00 |
| Agency Contacts/Coordination | 4 | \$85.00 | \$340.00 |
| Site Visit Preparation | 2 | \$85.00 | \$170.00 |
| Field Investigation | | | |
| Travel (round trip) | 11 | \$85.00 | \$935.00 |
| Site Visit | 8 | \$85.00 | \$680.00 |
| Biological Investigations | | | |
| Prepare Wetland Delineation Report Draft | 20 | \$85.00 | \$1,700.00 |
| Revise Draft Wetland Delineation Report per City and FRA comments | 1 | \$85.00 | \$85.00 |
| Submit Final Wetland Delineation Report to City and FRA | 1 | \$85.00 | \$85.00 |
| Section 404 Permit Application (IF REQUIRED) | 4 | \$85.00 | \$340.00 |
| USFWS T&E Approval Coordination | 4 | \$85.00 | \$340.00 |
| Cultural and Historic | | | |
| Tribal coordination through FRA | 6 | \$85.00 | \$510.00 |
| Subconsultant (Flat Earth Archaeology) | 1 | \$6,000.00 | \$6,000.00 |
| Hazardous/Regulated Materials | | | |
| | 4 | \$85.00 | \$340.00 |
| Miscellaneous | | | |
| Air Quality | 1 | \$85.00 | \$85.00 |
| Noise Quality | 2 | \$85.00 | \$170.00 |
| Hazardous Materials | 2 | \$85.00 | \$170.00 |
| Water Quality, including Public Drinking Supplies | 1 | \$85.00 | \$85.00 |
| Farmland | 1 | \$85.00 | \$85.00 |
| Land use and Land Cover | 1 | \$85.00 | \$85.00 |
| Migratory Birds | 2 | \$85.00 | \$170.00 |
| Terrestrial and Aquatic Communities | 2 | \$85.00 | \$170.00 |
| Endangered and Threatened Species | 2 | \$85.00 | \$170.00 |
| Economic | 1 | \$85.00 | \$85.00 |
| Community | 1 | \$85.00 | \$85.00 |
| Relocations | 1 | \$85.00 | \$85.00 |
| Environmental Justice and Title VI | 1 | \$85.00 | \$85.00 |
| Recreational Areas | 1 | \$85.00 | \$85.00 |
| Visual | 1 | \$85.00 | \$85.00 |
| Section 4(f) and 6(f) | 1 | \$85.00 | \$85.00 |
| Secondary and Cumulative Impacts | 4 | \$85.00 | \$340.00 |
| Environmental Documentation | | | |
| Prepare environmental document | 20 | \$85.00 | \$1,700.00 |
| Submit draft CE document to City and FRA | 1 | \$85.00 | \$85.00 |
| Revise CE document per City and FRA comments | 4 | \$85.00 | \$340.00 |
| Submit final CE document to City and FRA | 1 | \$85.00 | \$85.00 |
| Environmental Constraints Map | | | |
| | 6 | \$85.00 | \$510.00 |
| Public Involvement Meeting | | | |
| Travel (round trip) | 11 | \$85.00 | \$935.00 |
| Public Hearing | 4 | \$85.00 | \$340.00 |

Coordination

| | | | |
|--------------------------------|---|---------|----------|
| Project Coordination (General) | 4 | \$85.00 | \$340.00 |
|--------------------------------|---|---------|----------|

Quality Control (Senior Environmental Scientist)

| | | | |
|-----------------|---|----------|------------|
| Document Review | 8 | \$185.00 | \$1,480.00 |
|-----------------|---|----------|------------|

Sub-Total Labor - Design Phase

| | | | |
|--|-----|--|-------------|
| | 152 | | \$19,635.00 |
|--|-----|--|-------------|

DIRECT EXPENSES - ENVIRONMENTAL

| | QTY | Rate (\$) | TOTAL (\$/QTY) |
|--|-------|-----------|-------------------|
| Mileage (1 Site Investigation, 1 Public Meeting) | 1,300 | \$0.55 | \$822.25 |
| Lodging (two overnight stays) | 2 | \$110.00 | \$253.00 |
| Meals | 6 | \$20.00 | \$138.00 |
| Supplies | 1 | \$25.00 | \$28.75 |
| Sub-Total Direct Expenses - Environmental | | | \$1,242.00 |

TOTAL ENVIRONMENTAL**\$20,877.00**



Flat Earth Archeology, LLC

117 Financial Drive Cabot, AR 72023
(501) 286-7124 – office
(501) 593-0609 – cell
Website: FlatEarthArcheology.com
Email: chrisb@flateartharcheology.com

September 10, 2019

Eric Fuselier, CNRP
Crafton Tull
901 N. 47th Street, Suite 200
Rogers, AR 72756

RE: Cultural Resources Survey for FRA Categorical Exclusion for the City of Jonesboro in Craighead County, Arkansas

Mr. Fuselier:

This quote is submitted in relation to your request for a cultural resources survey of the above referenced undertaking. I have examined the maps provided. Flat Earth Archeology can conduct a Phase I archeological survey covering the two project areas as identified on the maps, equaling roughly 20-acres in Jonesboro, Arkansas. To achieve this, a pedestrian survey will be performed utilizing shovel test excavations to identify and assess the status of any cultural deposits inside the project areas. All work will conform to the standards set for the state of Arkansas which are described in *A State Plan for the Conservation of Archeological Resources in Arkansas* (Davis, ed. 1982, amended 2010) and the standards set by the U.S. Secretary of Interior's Standards and Guidelines for Archeological and Historic Preservation.

Background research and fieldwork can begin immediately after the receipt of the signed contract and/or written notice to proceed. Fieldwork will take a crew of archeologists roughly two to three days to complete depending on field conditions and if cultural resources are identified.

Flat Earth Archeology will write and submit the cultural resources report within 15 business days from the completion of fieldwork. The report will include information on any archeological sites identified and recommendations for the proposed project to be in compliance with federal and state regulations regarding cultural resources. The exact locations of any significant prehistoric or history archeological sites found will be supplied to you and your representatives for planning purposes only, with the stipulation that their locations will not be part of any document released to the public.

Three hard copies of the report will be sent to you (along with a digital version). You will need to disseminate copies of the report to the appropriate federal or state agency for review. Two required hard copies of the final report will be sent by Flat Earth Archeology

to the Arkansas Archeological Survey in Fayetteville for the state archives along with any artifacts recovered during the project for permanent curation.

You will need to provide maps (if necessary) of the proposed project to Flat Earth Archeology and notify us of any changes to the project area prior to fieldwork. You or your representative will obtain necessary permission for access to all property. We will not investigate areas where landowner permission is denied.

The cost estimate of the cultural resources work includes:

- cultural resources survey
- archeological site boundary documentation related to your project
- forms and preliminary assessments
- project paperwork
- Request for Technical Assistance (RTA) on historical structures (if needed)
- historical research
- laboratory analysis of artifacts
- permanent curation of any artifacts recovered during fieldwork at the University of Arkansas Collections Facility and payment of their associated fees
- production of the written report for the project and recommendations
- minimum of six hard copies of the final report (a digital version can be supplied to all parties also)

The cost of this cultural resources project is a fixed rate of \$6,000.00. A supplemental agreement will be needed if any additional items (such as Phase II significance testing, deep trenching, removal of cultural features, monitoring . . . etc.) are requested by you. The invoice will be sent upon completion and submittal of the report. Payment should be received within 60 days of receipt of the invoice. If additional archeological work (i.e. Phase II site testing or Phase III site mitigation) is required by the SHPO, a separate contract can be negotiated for that work.

Thank you for giving us the opportunity to assist you with your cultural resources needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Branam", with a long horizontal flourish extending to the right.

Chris Branam, RPA

APPENDIX B2

SUBCONSULTANT AGREEMENT

JOB NO. _____

FEDERAL AID PROJECT ("FAP") NO. _____

1. SUBCONSULTANT AGREEMENT

- 1.1. The services to be performed under this Subconsultant Agreement will be performed in connection with the Agreement for Engineering Services ("Prime Agreement") between the Consultant and the **CITY OF JONESBORO, AR** ("Owner") for Job No. _____, dated _____, **W. WILLIAM GRAHAM JR., INC.** ("Consultant") and **ANDERSON ENGINEERING CONSULTANTS, INC** ("Subconsultant") hereby agree that the Subconsultant shall perform the professional and related services as described herein. In consideration for the performance of the professional services the Consultant agrees to compensate (and reimburse, if applicable) the Subconsultant in the manner and at the rate(s) provided herein.
- 1.2. The definitions of the Prime Agreement, and its provisions relating to the obligations, duties, and rights of subcontractors, *or which are otherwise required to be inserted into any subcontracting agreements*, are deemed to be part of, and are hereby incorporated by reference into, this Subconsultant Agreement and made binding upon the Subconsultant.

2. DESCRIPTION OF PROJECT AND SERVICES TO BE PROVIDED

Geotechnical Engineering Services for the Project including soils investigation and report, quality control and testing of construction.

3. COSTS, FEES, PAYMENTS AND RATE SCHEDULES

See Exhibit "A" – Proposal for Geotechnical Services

- TITLE I \$ 3,735.00
- TITLE II \$ 19,414.00

4. COMPENSATION SUBJECT TO LIMITATIONS OF FEDERAL AND STATE LAW

- 4.1. The Project (as defined in the Prime Agreement), part of which is to be performed under this Subconsultant Agreement, is a federally-assisted project and federal funds will be used, in part, to pay the Consultant and Subconsultant. Therefore, notwithstanding any provision of this Subconsultant Agreement or the Prime Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of 48 C.F.R. Part 31, including those relating to determination of indirect cost rates, if applicable. The Subconsultant shall certify the accuracy of all invoices, requests for payment, and cost rates (if applicable), along with supporting documentation and any supporting information or records provided prior to, during, or after the term of this Subconsultant Agreement.

5. COMMISSION, AHTD, AND FHWA AS THIRD PARTY BENEFICIARIES

- 5.1. This Subconsultant Agreement is between and binding upon only the Consultant and Subconsultant. The Commission, AHTD, and FHWA are not parties to this Subconsultant Agreement, but are expressly made third-party beneficiaries of this Subconsultant Agreement and shall be entitled to enforce any obligation of the Subconsultant owed to the Consultant. No provision of this Subconsultant Agreement or the Prime Agreement, nor the exercise of any right thereunder, shall be construed as creating any obligation or any liability on the part of, or operating as a waiver of any immunity of, the Commission, the AHTD, the FHWA, or any of their employees, officers, or agents.
- 5.2. The Subconsultant's sole recourse, if any, for any injury arising under or related to this Subconsultant Agreement, the performance of services hereunder, or compensation or claims hereunder, shall be against the Consultant.
- 5.3. The Disputes and Claims provisions of the Prime Agreement shall not apply to this Subconsultant Agreement.

6. **RECORDS & AUDITS**

- 6.7. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 6.8. *Examination.* The Subconsultant shall maintain, and the Owner, AHTD, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Subconsultant's offices and facilities, or parts of them, engaged in performing the Agreement.
- 6.9. *Supporting Data.* If the Subconsultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, AHTD, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Subconsultant's records, including computations and projections, related to—
 - The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
 - Any proposal for the Agreement, subcontract, or modification;
 - Discussions conducted on the proposal(s), including those related to negotiating;
 - Fees or allowable costs under the Agreement, subcontract, or modification;
 - Performance of the Agreement, subcontract or modification; or,
 - The amount and basis of any claim or dispute.

- 6.10. *Audit.* The Owner, AHTD, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Subconsultant's records involving transactions related to this Agreement or a subcontract hereunder.
- 6.11. *Reports.* If the Consultant is required to furnish cost, funding, or performance reports, the Owner, AHTD, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Consultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 6.12. *Availability.* The Consultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 28, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 6.12.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 6.12.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.

7. SUBCONTRACTING

- 7.1. Unless expressly disclosed in Appendix B, the Subconsultant may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 7.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Subconsultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Subconsultant of any responsibility, obligation, or duty under this Agreement.
- 7.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 7.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 7.5. *Prompt Payment.* The Subconsultant shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Consultant to the Subconsultant. Any retainage payments held by the Subconsultant must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the

Subconsultant. If the Subconsultant fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:

- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the Subconsultant;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the Subconsultant until the Subconsultant ensures that the subcontractors have been and will be promptly paid for work performed.

8. COVENANT AGAINST CONTINGENCY FEES

- 8.1. The Subconsultant warrants that no person or agency has been employed or retained to solicit or obtain this Subconsultant Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the AHTD and Consultant shall have the right to annul this Subconsultant Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.
- 8.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the Subconsultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 8.3. *Bona fide employee*, as used in this section, means a person, employed by the Subconsultant and subject to the Subconsultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 8.4. *Contingent fee*, as used in this section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 8.5. *Improper influence*, as used in this section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

9. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Subconsultant Agreement, the Subconsultant, for itself, successors, and assigns, certifies and agrees as follows:

- 9.1. *Compliance with Regulations*. The Subconsultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference

and made a part of this Subconsultant Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

- 9.2. *Nondiscrimination.* The Subconsultant, with regard to the work performed by it during the term of this Subconsultant Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Subconsultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- 9.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Subconsultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Subconsultant of the Subconsultant's obligations under this Subconsultant Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 9.4. *Information and Reports.* The Subconsultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, and accounts, other sources of information, and its facilities as may be determined by the Owner, the AHTD, or the FHWA to be pertinent to ascertain compliance with such regulations and directives. Where any information required of the Subconsultant is in the exclusive possession of another who fails or refuses to furnish this information, the Subconsultant shall so certify to the Owner, the AHTD or the FHWA, as appropriate, and shall set forth the efforts made by the Subconsultant to obtain the records or information.
- 9.5. *Sanctions for Noncompliance.* In the event of the Subconsultant's noncompliance with the nondiscrimination provisions of this Subconsultant Agreement, the Owner shall impose such contract sanctions as it, the AHTD, or the FHWA may determine to be appropriate, including but not limited to, withholding of payments to the Consultant or Subconsultant under the Agreement until the Subconsultant complies with the provisions and/or cancellation, termination, or suspension of the Subconsultant Agreement, in whole or in part.
- 9.6. *Incorporation of Provisions.* The Subconsultant shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Subconsultant shall take such action with respect to any subcontract or procurement as the Owner, the AHTD, or FHWA may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, however that, in the event the Subconsultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Subconsultant may request the Owner, the AHTD, or the United States to enter into the litigation to protect the interests of the State and the United States, respectively.

10. DBE CLAUSE

- 10.1. The Subconsultant shall not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the performance of this Subconsultant Agreement. The

Subconsultant shall comply with the applicable requirements of 49 C.F.R. Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Subconsultant to comply with or perform these requirements is a material breach of this Subconsultant Agreement, which may result in the cancellation, termination, or suspension of this Subconsultant Agreement in whole or in part, or such other remedy that the AHTD may determine appropriate.

11. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)

- 11.1. The Subconsultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 11.2. The Subconsultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 11.3. In accordance with Section 504 regulations 49 C.F.R. Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

12. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- 12.1. The Subconsultant (**Anderson Engineering Consultants, INC**) certifies, to the best of its knowledge and belief, that—
 - 12.1.1. The Subconsultant and any of its Principals (**Mr. Stuart Scheiderer**) —
 - 12.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;
 - 12.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 12.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 12.1.1.2; and,
 - 12.1.1.4. The Subconsultant has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.

- 12.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.
- 12.3. The Subconsultant shall provide immediate written notice to the AHTD if, at any time prior to contract award, the Subconsultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 12.4. The certification in subsection 12.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Subconsultant knowingly rendered an erroneous certification, the AHTD may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the AHTD.

13. NOTICE

- 13.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be mailed or hand-delivered to:

13.1.1. To the Subconsultant:

ANDERSON ENGINEERING CONSULTANTS, INC
Att: Mr. Stuart Scheiderer
10205 Rockwood Road
Little Rock, AR 72204
(501)455-4545

13.1.2. To the Consultant:

W. WILLIAM GRAHAM JR., INC.
100 N. Rodney Parham Rd (Suite 2B)
Little Rock, AR 72205
(501)227-0078

IN WITNESS WHEREOF, the parties execute this Subconsultant Agreement, to be effective _____.

(CONSULTANT NAME)

(SUBCONSULTANT NAME)

BY: _____
 ROBERT B. GRAHAM
 President

BY: _____
 Stuart Scheiderer
 Vice President



ANDERSON ENGINEERING CONSULTANTS, INC.

10205 W ROCKWOOD ROAD
LITTLE ROCK, AR 72204
(501) 455-4545

3217 NEIL CIRCLE
JONESBORO, AR 72401
(870) 932-3700

620 E 3RD STREET
HOPE, AR 71801
(501) 515-4654

September 11, 2019

Mr. Robert Graham, P.E.
W. William Graham Jr, Inc.
100 North Rodney Parham Road, Suite 2B
Little Rock, Arkansas 72205

Proposal No. 19312

Email: wwg-eng@swbell.net

Re: Proposal for Geotechnical Services
Proposed Jonesboro Industrial Lead Rail Expansion
Jonesboro, Arkansas

Dear Mr. Graham:

Anderson Engineering Consultants, Inc. (AECI), is pleased to submit this proposal for geotechnical engineering services for the referenced project. In order to expedite our services and to better define the project specific recommendations, the client is requested to provide any project development data that is currently available. This would typically include; site plan or sketch showing building/pavement areas, site boundary survey with topographic map, finished floor/grade elevations, and typical column/wall loads. The following then, represents the scope of services requested by client to obtain the necessary geotechnical engineering data for the proposed project.

I. Geotechnical Engineering Investigation and Report

Our services for the proposed project will include the drilling and sampling of six (6) borings to a depth of 15.0 feet or to auger refusal within the proposed rail line. Based on these borings, any laboratory testing required will be performed to support the engineering analyses. The report will include the pertinent foundation design criteria including settlement and bearing capacity, swell and shrinkage potential of the overburden soil, suitability of the on-site soil for use as fill, flexible and rigid pavement designs and other pertinent geotechnical design recommendations. Unless otherwise specified by client, an electronic copy of the report will be provided to the client.

Lump Sum Fee \$3,735.00

II. Additional Services

- A) Should site access assistance be required to reach the boring locations (i.e. dozer, wrecker, or brush clearing), then our cost + 15% will be added to our fee.
- B) Should soft or otherwise unusual soil conditions be encountered at the site, then additional depth or borings may be required. In this case, an additional drilling/sampling fee of \$20.00 per foot will be added to our fee.
- C) Should changes occur in the nature, layout, or architectural aspect for the project which requires additional fieldwork or consultation by AECI, these services will be billed per the AECI 2019 Unit Rate Schedule in addition to the lump sum fee given above.

In any case, the client will be notified prior to additional work being performed, for approval.



Mr. Robert Graham, P.E.
W. William Graham Jr, Inc.
Page 2, 09/11/19

III. Schedule

Based upon our current schedule of ongoing projects, we estimate completion of this project within four (4) to six (6) weeks of receipt of a signed copy of this agreement. However, advance design information will be forwarded as soon as possible upon completion of drilling operations. This schedule is dependent on weather, holidays, receipt of project information from client, and project site conditions beyond our control. The client should contact this firm if a more specific schedule is needed.

Our firm provides Phase I Environmental assessments in accordance with ASTM standards. We would be pleased to discuss this service with you should it be required. Additionally, our firm also has the personnel and equipment to provide monitoring and materials testing during construction. When appropriate, we would be happy to develop a unit rate or lump sum cost for the services you may need during construction.

If this proposal including the attached terms and conditions is acceptable, please sign below, which will make this document our contract, then return it to our office as soon as possible. In the meantime, if you have any questions about this proposal, please contact us at your convenience.

Very truly yours,

ANDERSON ENGINEERING CONSULTANTS, INC.

Stuart M. Scheiderer, R.E.P., P.E.
Vice President/Senior Geotechnical Engineer

SMS/msk
19312.PRO

Enclosures – Terms and Conditions

AUTHORIZATION

Signature

Company

Printed Name

Date

NOTE: If this proposal is not accepted within 30 days of its receipt, AECI should be contacted to verify costs and time schedules.

PROPOSAL FOR QUALITY CONTROL TESTING SERVICES

Page 1 of 1

Date: 9/18/2019

Proposal No.: 19328

PROJECT:

Jonesboro Industrial Lead Rail Expansion

Jonesboro, Arkansas

CLIENT:

W. William Graham Jr., Inc.

100 North Rodney Parham Road, Suite 2B

Little Rock, Arkansas 72205

Attention: Mr. Robert Graham, P. E.

wwg-eng@swbell.net

Based on conversations with the client, routine quality control testing of construction materials is anticipated for this project. For estimating purposes, the price for a 'trip' is inclusive of travel time portal to portal, mileage (approximately 10 miles roundtrip) and rental charge for nuclear density gauge. One trip will encompass approximately 5 hours of technician time. The project is reportedly to last 16 weeks with 3 to 4 trips per week.

Site Preparation/Earthwork

- | | |
|---|-------------|
| - Engineering technician to perform field density tests of fill placed on a 'call-out' basis. (56 trips @ \$306.50/trip) | \$17,164.00 |
| - Perform Proctor testing of fill materials used for the project (estimate 5 @ \$450/each) | \$2,250.00 |

Total Estimated Fee for Services = \$19,414.00

Notes:

1. Only actual technician times and quantities performed will be invoiced at applicable Unit Rates. Quantities indicated herein are estimated and based on previous experience on projects of similar size.
2. Testing will be performed on a 'call-out' basis andy only at times scheduled by the client's appointed designee. Testing should be scheduled 24 hours prior.
3. AECl not responsible for line and grade.
4. A copy of plans and specifications should be provided electronically for our use.
5. The fees indicated herein are based on Special Inspection technician rates.
6. Client is requested to provide a distribution list for parties who need copies of reports.

Provided by:



Stuart M. Scheiderer, R.E.P., P. E.

Vice-President

Accepted by:

(signature)

(printed)

(title)

(company)

Attachments: 2018 Unit Rates, Terms and Conditions



TERMS & CONDITIONS FOR GEOTECHNICAL SERVICES

I) Definition of Client

As described herein, the Client is defined as that entity or body whom has authorized services by Consultant and accepts these terms and conditions, including payment of fees.

II) Reliance

The services, information, and other data required by this Agreement to be furnished by the Client shall be at the Client's expense, and the Consultant may rely upon all data furnished by the Client, and the accuracy and completeness thereof.

III) Assignment

Neither party to this agreement shall transfer, sublet, or assign any rights in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

IV) Authorized Access to Property

The client shall be fully responsible for obtaining the necessary authorizations to allow the Consultant, its agents, subcontractors and representatives, to have access to the site and buildings thereon at reasonable times throughout contract performance by the Consultant. Consultant will take reasonable precautions to minimize damage to the site from use of equipment, but unavoidable damage or alteration may occur and the Client agrees to assume responsibility for such unavoidable damage or alteration.

V) Discovery of Unanticipated Pollutants

If, while performing the services, pollutants are discovered that pose unanticipated risks (i.e. hazardous waste, explosives, or methane gas), it is hereby agreed that the scope of services, schedule, and the estimated project cost will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination. In the event that the Agreement is terminated because of the discovery of pollutants posing unanticipated risks, it is agreed that Consultant shall be paid for the total charges for labor performed and reimbursable charges incurred to the date of termination of this Agreement, including, if necessary, and additional labor or reimbursable charges incurred in demobilizing.

VI) Preservation of Utilities

Consultant will strive to preserve all utilities or underground structures at the site. However, Consultant will not be responsible for damage or repair to utilities when they are unknown or not properly identified on drawings or plans provided by Client.

VII) Professional Practice

Consultant agrees to strive to perform the services set forth in this Agreement in accordance with generally accepted professional practices, in the same or similar localities, related to the nature of the work accomplished, at the time the services are performed. It should be understood by Client that geological conditions are random and variable and are affected by time, weather, and man influenced conditions. Consultant will be responsible for our interpretations of geologic conditions and consequent recommendations, but shall not be responsible for interpretation by third parties. Additionally, Consultant's services shall not be subject to any express or implied warranties whatsoever.

VIII) Responsibility

Client hereby agrees that to the fullest extent permitted by law the Consultant's total liability to client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way relating to the project, the site, or this agreement from any cause or causes including but not limited to the Consultant's negligence, errors, omissions, failure to perform, or breach of contract shall not exceed the total amount paid by the Client for the services of the Consultant under this contract or \$25,000.00, whichever is lesser. Should Client desire not to limit Consultant's responsibility in this manner, Consultant will agree to waive this clause upon receipt of Client's written request with return of this signed contract. In consideration for this waiver, Client agrees to pay an additional 5% of the agreed consulting fee or \$1,000.00, whichever is higher.

IX) Unavoidable Delays

Client should understand that unavoidable delays in completion of the work may occur due to factors such as; weather, poor site conditions, and holidays. Consultant agrees to notify Client of such delays as soon as they become known.

X) Disposition of Samples

All samples obtained from the investigation at the project site will be stored for a period of 30 days from date of issue of the report. Should Client desire to extend this date, Consultant will require prior written authorization and storage costs will be invoiced on a monthly basis.

XI) Ownership of Documents

Reports, recommendations, and other materials resulting from Consultant's efforts are intended solely for purposes of this Agreement; any reuse by Client for purposes outside of this Agreement or any failure to follow consultant's recommendations, without Consultant's written verification, adaptation, and permission, shall be at the user's sole risk and Client shall indemnify and hold Consultant harmless for any loss or expense to Consultant arising out of reuse or misuse. All reports, field notes, calculations, and other documents including any information on electronic media which are prepared as instruments of service, shall remain Consultant's property and Consultant shall retain copyrights to these materials. Consultant will retain all pertinent records relating to services performed for a period of three years following submission of a report, during which period the records will be made available to Client at all reasonable times.

XII) Governance

The laws of the State of Arkansas will govern the validity of this Agreement, its interpretation, and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of that State.

XIII) Payment for Services

The consultant shall submit individual invoices at completion of work or monthly statements to the Client or Client's representative for services performed during the 30 day period. Client's representative shall pay or review and forward invoice to Client for payment within 5 days of receipt of invoice. The Client shall then promptly review the Consultant's invoices and payment shall be due thereon within fifteen days of receipt thereof. If either party disputes any amounts invoiced, the Client shall give the Consultant prompt written notice thereof, including the item or items disputed and the basis for the dispute. The Client shall in any event pay all amounts invoiced that the Client does not dispute as provided herein.

XIII) Insurance

The Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the states having jurisdiction over Consultant's employees who are engaged in the services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occurrence/\$2,000,000 aggregate); (iii) automobile liability insurance (\$1,000,000 BI & PD); and (iv) professional liability insurance (\$1,000,000 claim/agg). Certificates of insurance will be provided upon request.

XV) Termination

Either party may terminate this Agreement or the services upon written notice to the other. Consultant shall be paid costs incurred and fees earned to the date of termination.

APPENDIX B3

SUBCONSULTANT AGREEMENT

JOB NO. _____

FEDERAL AID PROJECT ("FAP") NO. _____

1. SUBCONSULTANT AGREEMENT

1.1. The services to be performed under this Subconsultant Agreement will be performed in connection with the Agreement for Engineering Services ("Prime Agreement") between the Consultant and the **CITY OF JONESBORO, AR** ("Owner") for Job No. _____, dated _____, _____, **W. WILLIAM GRAHAM JR., INC.** ("Consultant") and **ASSOCIATED ENGINEERING, LLC** ("Subconsultant") hereby agree that the Subconsultant shall perform the professional and related services as described herein. In consideration for the performance of the professional services the Consultant agrees to compensate (and reimburse, if applicable) the Subconsultant in the manner and at the rate(s) provided herein.

1.2. The definitions of the Prime Agreement, and its provisions relating to the obligations, duties, and rights of subcontractors, *or which are otherwise required to be inserted into any subcontracting agreements*, are deemed to be part of, and are hereby incorporated by reference into, this Subconsultant Agreement and made binding upon the Subconsultant.

2. DESCRIPTION OF PROJECT AND SERVICES TO BE PROVIDED

Land Surveying Services for the Project including boundary surveying and topographic surveying of the Project areas as required.

3. COSTS, FEES, PAYMENTS AND RATE SCHEDULES

See Exhibit "A" – Proposal for Land Surveying Services
- TITLE I \$ 14,950.00

4. COMPENSATION SUBJECT TO LIMITATIONS OF FEDERAL AND STATE LAW

4.1. The Project (as defined in the Prime Agreement), part of which is to be performed under this Subconsultant Agreement, is a federally-assisted project and federal funds will be used, in part, to pay the Consultant and Subconsultant. Therefore, notwithstanding any provision of this Subconsultant Agreement or the Prime Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of 48 C.F.R. Part 31, including those relating to determination of indirect cost rates, if applicable. The Subconsultant shall certify the accuracy of all invoices, requests for payment, and cost rates (if applicable), along with supporting documentation and any supporting information or records provided prior to, during, or after the term of this Subconsultant Agreement.

5. COMMISSION, AHTD, AND FHWA AS THIRD PARTY BENEFICIARIES

5.1. This Subconsultant Agreement is between and binding upon only the Consultant and Subconsultant. The Commission, AHTD, and FHWA are not parties to this

Subconsultant Agreement, but are expressly made third-party beneficiaries of this Subconsultant Agreement and shall be entitled to enforce any obligation of the Subconsultant owed to the Consultant. No provision of this Subconsultant Agreement or the Prime Agreement, nor the exercise of any right thereunder, shall be construed as creating any obligation or any liability on the part of, or operating as a waiver of any immunity of, the Commission, the AHTD, the FHWA, or any of their employees, officers, or agents.

5.2. The Subconsultant's sole recourse, if any, for any injury arising under or related to this Subconsultant Agreement, the performance of services hereunder, or compensation or claims hereunder, shall be against the Consultant.

5.3. The Disputes and Claims provisions of the Prime Agreement shall not apply to this Subconsultant Agreement.

6. RECORDS & AUDITS

6.13. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

6.14. *Examination.* The Subconsultant shall maintain, and the Owner, AHTD, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Subconsultant's offices and facilities, or parts of them, engaged in performing the Agreement.

6.15. *Supporting Data.* If the Subconsultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, AHTD, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Subconsultant's records, including computations and projections, related to—

- The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
- Any proposal for the Agreement, subcontract, or modification;
- Discussions conducted on the proposal(s), including those related to negotiating;
- Fees or allowable costs under the Agreement, subcontract, or modification;
- Performance of the Agreement, subcontract or modification; or,
- The amount and basis of any claim or dispute.

- 6.16. *Audit.* The Owner, AHTD, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Subconsultant's records involving transactions related to this Agreement or a subcontract hereunder.
- 6.17. *Reports.* If the Consultant is required to furnish cost, funding, or performance reports, the Owner, AHTD, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Consultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 6.18. *Availability.* The Consultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 28, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 6.18.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 6.18.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.

7. SUBCONTRACTING

- 7.1. Unless expressly disclosed in Appendix B, the Subconsultant may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 7.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Subconsultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Subconsultant of any responsibility, obligation, or duty under this Agreement.
- 7.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 7.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 7.5. *Prompt Payment.* The Subconsultant shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Consultant to the Subconsultant. Any retainage payments held by the Subconsultant must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the

Subconsultant. If the Subconsultant fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:

- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the Subconsultant;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the Subconsultant until the Subconsultant ensures that the subcontractors have been and will be promptly paid for work performed.

8. COVENANT AGAINST CONTINGENCY FEES

- 8.1. The Subconsultant warrants that no person or agency has been employed or retained to solicit or obtain this Subconsultant Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the AHTD and Consultant shall have the right to annul this Subconsultant Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.
- 8.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the Subconsultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 8.3. *Bona fide employee*, as used in this section, means a person, employed by the Subconsultant and subject to the Subconsultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 8.4. *Contingent fee*, as used in this section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 8.5. *Improper influence*, as used in this section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

9. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Subconsultant Agreement, the Subconsultant, for itself, successors, and assigns, certifies and agrees as follows:

- 9.1. *Compliance with Regulations*. The Subconsultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference

and made a part of this Subconsultant Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

- 9.2. *Nondiscrimination.* The Subconsultant, with regard to the work performed by it during the term of this Subconsultant Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Subconsultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- 9.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Subconsultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Subconsultant of the Subconsultant's obligations under this Subconsultant Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 9.4. *Information and Reports.* The Subconsultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, and accounts, other sources of information, and its facilities as may be determined by the Owner, the AHTD, or the FHWA to be pertinent to ascertain compliance with such regulations and directives. Where any information required of the Subconsultant is in the exclusive possession of another who fails or refuses to furnish this information, the Subconsultant shall so certify to the Owner, the AHTD or the FHWA, as appropriate, and shall set forth the efforts made by the Subconsultant to obtain the records or information.
- 9.5. *Sanctions for Noncompliance.* In the event of the Subconsultant's noncompliance with the nondiscrimination provisions of this Subconsultant Agreement, the Owner shall impose such contract sanctions as it, the AHTD, or the FHWA may determine to be appropriate, including but not limited to, withholding of payments to the Consultant or Subconsultant under the Agreement until the Subconsultant complies with the provisions and/or cancellation, termination, or suspension of the Subconsultant Agreement, in whole or in part.
- 9.6. *Incorporation of Provisions.* The Subconsultant shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Subconsultant shall take such action with respect to any subcontract or procurement as the Owner, the AHTD, or FHWA may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, however that, in the event the Subconsultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Subconsultant may request the Owner, the AHTD, or the United States to enter into the litigation to protect the interests of the State and the United States, respectively.

10. DBE CLAUSE

- 10.1. The Subconsultant shall not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the performance of this Subconsultant Agreement. The

Subconsultant shall comply with the applicable requirements of 49 C.F.R. Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Subconsultant to comply with or perform these requirements is a material breach of this Subconsultant Agreement, which may result in the cancellation, termination, or suspension of this Subconsultant Agreement in whole or in part, or such other remedy that the AHTD may determine appropriate.

11. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)

- 11.1. The Subconsultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 11.2. The Subconsultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 11.3. In accordance with Section 504 regulations 49 C.F.R. Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

12. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- 12.1. The Subconsultant (**Associated Engineering, LLC**) certifies, to the best of its knowledge and belief, that—
 - 12.1.1. The Subconsultant and any of its Principals (**Mr. John Easley**) —
 - 12.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;
 - 12.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 12.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 12.1.1.2; and,
 - 12.1.1.4. The Subconsultant has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.

- 12.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.
- 12.3. The Subconsultant shall provide immediate written notice to the AHTD if, at any time prior to contract award, the Subconsultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 12.4. The certification in subsection 12.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Subconsultant knowingly rendered an erroneous certification, the AHTD may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the AHTD.

13. NOTICE

- 13.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be mailed or hand-delivered to:

13.1.1. To the Subconsultant:

**ASSOCIATED ENGINEERING, LLC
Att: Mr. John Easley
103 South Church Street
Jonesboro, AR 72403
(870)932-3594**

13.1.2. To the Consultant:

**W. WILLIAM GRAHAM JR., INC.
100 N. Rodney Parham Rd (Suite 2B)
Little Rock, AR 72205
(501)227-0078**

IN WITNESS WHEREOF, the parties execute this Subconsultant Agreement, to be effective _____.

(CONSULTANT NAME)

(SUBCONSULTANT NAME)

BY: _____
ROBERT B. GRAHAM
President

BY: _____
John Easley
Managing Member

Associated Engineering and Testing, LLC

P.O. Box 1462 - Jonesboro, AR 72403 - Phone (870) 932-3594 - FAX (870) 935-1263

| Job Name: | | RR Ext Alt 1 | | |
|---------------------------------|---------------------|--------------|------------------|--------------------|
| Design Topo | | | | |
| Task | Position | Man Hours | Rate | Amount |
| Recon & Tie-in/Traverse control | 3-man Field Crew | 3.00 hrs | \$ 145.00/hr | \$435.00 |
| Establish benchmark. | 3-man Field Crew | 4.00 hrs | \$ 145.00/hr | \$580.00 |
| Topographic survey | 3-man Field Crew | 30.00 hrs | \$ 145.00/hr | \$4,350.00 |
| Prepare boundary/ topo drawing | Cad drafting | 30.00 hrs | \$ 65.00/hr | \$1,950.00 |
| Check drawing/write description | Registered Surveyor | 1.00 hrs | \$ 80.00/hr | \$80.00 |
| Calculations/Setup | Registered Surveyor | 1.00 hrs | \$ 80.00/hr | \$80.00 |
| | | | Sub-Total | \$7,475.00 |
| Job Name: | | RR Ext Alt 2 | | |
| Design Topo | | | | |
| Task | Position | Man Hours | Rate | Amount |
| Recon & Tie-in/Traverse control | 3-man Field Crew | 3.00 hrs | \$ 145.00/hr | \$435.00 |
| Establish benchmark. | 3-man Field Crew | 4.00 hrs | \$ 145.00/hr | \$580.00 |
| Topographic survey | 3-man Field Crew | 30.00 hrs | \$ 145.00/hr | \$4,350.00 |
| Prepare boundary/ topo drawing | Cad drafting | 30.00 hrs | \$ 65.00/hr | \$1,950.00 |
| Check drawing/write description | Registered Surveyor | 1.00 hrs | \$ 80.00/hr | \$80.00 |
| Calculations/Setup | Registered Surveyor | 1.00 hrs | \$ 80.00/hr | \$80.00 |
| | | | Sub-Total | \$7,475.00 |
| | | | Total | \$14,950.00 |

APPENDIX C (C-1)

JOB NO. _____
FEDERAL AID PROJECT ("FAP") NO. _____

CERTIFICATION OF CONSULTANT

I hereby certify that I, **ROBERT B. GRAHAM**, am the **PRESIDENT** and duly authorized representative of the firm of **W. WILLIAM GRAHAM JR., INC.** whose headquarters address is **100 N. Rodney Parham Rd (Ste 2B), Little Rock, AR 72205**, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;
- (d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed, except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas State Highway and Transportation Department and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 31 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment.

NOTICE OF NONDISCRIMINATION STATEMENT

W. WILLIAM GRAHAM JR., INC. ("Consultant"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Consultant does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in Consultant's programs and activities, as well as the Consultant's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Consultant's nondiscrimination policies may be directed to **Robert Graham** (ADA/504/Title VI Coordinator), **100 N. Rodney Parham Rd. (Ste 2B), Little Rock, AR 72205 ph.(501)227-0078** (Voice/TTY 711), or , the following email address: **wwg_eng@swbell.net**

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

Authorized Firm Representative

Date

APPENDIX C (C-2)

JOB NO. _____
FEDERAL AID PROJECT ("FAP") NO. _____

CERTIFICATION OF SUBCONSULTANT

I hereby certify that I, _____, am the _____ and duly authorized representative of the firm of _____ whose headquarters address is _____, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;
- (d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed. except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas State Highway and Transportation Department and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 9 of this Subconsultant Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment.

NOTICE OF NONDISCRIMINATION STATEMENT

[Provided by Consultant/Subconsultant. A sample is shown below.]

The _____ ("Subconsultant"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Subconsultant does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in Subconsultant's programs and activities, as well as the Subconsultant's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Subconsultant's nondiscrimination policies may be directed to _____ (ADA/504/Title VI Coordinator), _____, (Voice/TTY 711), or , the following email address: _____.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

Authorized Firm Representative

Date

APPENDIX C (C-3)

JOB NO. _____
FEDERAL AID PROJECT ("FAP") NO. _____

CERTIFICATION OF CITY OF JONESBORO, ARKANSAS

I hereby certify that I am the Mayor of the City of Jonesboro, Arkansas and that the aforementioned consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee contributions donation, or consideration of any kind:

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Highway and Transportation Department and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

HAROLD PERRIN
Mayor – City of Jonesboro, AR